voting; passed by the Senate, with amendments, on May 25, 1989, by the following vote: Yeas 31, Nays 0.

Approved June 15, 1989.

Effective June 15, 1989.

CHAPTER 1027

H.B. No. 18

AN ACT

relating to health care, including powers and duties of the center for rural health initiatives, the collection of data concerning health professions, surveys of hospitals and physicians, breast cancer screening, hospital patient transfers, the establishment of advisory committees, the swing bed program to provide reimbursement for skilled nursing patients, rural health family practice residency programs, medical education, professional liability insurance for physicians and other health care professionals, state indemnification for the provision of charity care or services, the delegation of prescription drug orders, qualifications of expert witnesses and jury instructions in health care liability claims, and emergency medical services and trauma care systems; providing civil penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. This Act may be cited as the Omnibus Health Care Rescue Act.

SECTION 2. Title 71, Revised Statutes, is amended by adding Article 4414b-1 to read as follows:

Art. 4414b-1. CENTER FOR RURAL HEALTH INITIATIVES

Sec. 1. DEFINITIONS. (a) "Center" means the Center for Rural Health Initiatives.

(b) "Executive committee" means the executive committee of the Center for Rural Health Initiatives.

Sec. 2. CENTER FOR RURAL HEALTH INITIATIVES. The Center for Rural Health Initiatives is established.

Sec. 3. PURPOSE. The center shall assume a leadership role in working or contracting with state and federal agencies, universities, private interest groups, communities, foundations, and offices of rural health to develop rural health initiatives and maximize use of existing resources without duplicating existing effort. The center shall provide a central information and referral source and serve as the primary state resource in coordinating, planning, and advocating for the continued access to rural health care services in Texas.

Sec. 4. DUTIES. (a) The center shall:

(1) educate the public and recommend appropriate public policies regarding the continued viability of rural health care delivery in Texas;

(2) monitor and work with state and federal agencies to assess the impact of proposed rules and regulations on rural areas; provide impact statements of proposed rules and regulations as deemed appropriate by the center; streamline regulations to assist in the development of service diversification of health care facilities; and target state and federal programs to rural areas;

(3) promote and develop community involvement and community support in maintaining, rebuilding, or diversifying local health services;

(4) promote and develop diverse and innovative health care service models in rural areas;

(5) encourage the use of advanced communications technology to provide access to specialty expertise, clinical consultation, and continuing education;

(6) assist rural health care providers, communities, and individuals in applying for public and private grants and programs;

(7) encourage the development of regional emergency transportation networks;

(8) work with state agencies, universities, and private interest groups to conduct and promote research on rural health issues, maintain and collect a timely data base, and develop and maintain a rural health resource library;

(9) solicit the assistance of other offices or programs of rural health in Texas that are university-based to carry out the duties of this Act;

(10) disseminate information and provide technical assistance to communities, health care providers, and individual consumers of health care services; and

(11) develop plans to implement a fee-for-service health care professional recruitment service and a medical supplies group purchasing program within the center.

(b) The center is authorized to solicit, receive, and spend grants, gifts, and donations from public and private sources.

(c) The center may contract with public and private entities in the performance of its responsibilities.

Sec. 5. EXECUTIVE COMMITTEE. (a) The executive committee is the governing body of the center.

(b) The executive committee is composed of:

(1) three members appointed by the governor, including: one physician licensed to practice in Texas, one pharmacist licensed to practice in Texas, and one business or community leader;

(2) three members appointed by the lieutenant governor, including: one registered nurse licensed to practice in Texas, one allied health professional who is licensed, registered, or certified to practice in Texas, and one rural health policy expert; and

(3) three members appointed by the speaker of the house of representatives, including: one physician licensed to practice in Texas, one hospital administrator, and one health economist.

(c) The appointments to the executive committee shall be individuals who reside, work, or practice in rural areas of the state or who have demonstrated knowledge and expertise in rural issues.

(d) The appointments to the executive committee shall provide for a balanced representation of the geographical regions of the state.

(e) The members of the executive committee serve staggered six-year terms, with the terms of three members expiring August 31 of each odd-numbered year.

(f) The members of the executive committee shall annually elect one member to serve as presiding officer.

(g) The executive committee shall meet at least quarterly or at the call of the presiding officer and shall adopt rules for the conduct of the meetings.

(h) Any actions taken by the executive committee must be approved by a majority vote.

(i) Members of the executive committee receive no compensation but are entitled to reimbursement of actual and necessary expenses incurred in the performance of their duties.

(j) The executive committee shall establish policies and adopt rules to implement this Act.

Sec. 6. EXECUTIVE DIRECTOR. (a) The executive committee may hire an executive director to serve as the chief executive officer of the center and to perform the administrative duties of the office.

(b) The executive director serves at the will of the executive committee.

(c) The executive director may hire staff within the guidelines established by the executive committee.

Sec. 7. ADVISORY COMMITTEE. (a) The advisory committee is composed of the following:

(1) the commissioner of health or a representative of the department designated by the commissioner;

(2) the commissioner of human services or a representative of the department designated by the commissioner;

(3) the commissioner of agriculture or a representative of the department designated by the commissioner;

(4) the executive director of the Texas Department of Commerce or a representative of the department designated by the executive director; and

(5) the commissioner of higher education or a representative of the Texas Higher Education Coordinating Board designated by the commissioner.

(b) The executive committee may appoint additional agencies as necessary to serve on the advisory committee in a temporary capacity. The executive committee also may request that a state agency designate an employee to serve as a liaison with the center.

(c) The Texas Department of Health shall provide administrative support to the center as necessary to carry out the duties of this Act. The department and the other agencies represented on the advisory committee shall provide staff support to the center and may provide staff and other support services to the executive committee.

(d) The advisory committee may participate fully in executive committee meetings; however, advisory committee members do not have voting privileges.

Sec. 8. REPORTS TO LEGISLATURE. No later than January 1 of each odd-numbered year, the center shall submit a biennial report to the legislature regarding the activities of the center and any findings and recommendations relating to rural issues.

Sec. 9. APPLICATION OF SUNSET ACT. The Center for Rural Health Initiatives is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that Act, the center is abolished and this Act expires September 1, 2001.

SECTION 3. Title 71, Revised Statutes, is amended by adding Article 4414b-2 to read as follows:

Art. 4414b-2. HEALTH PROFESSIONS RESOURCE CENTER. (a) In conjunction with the Texas Higher Education Coordinating Board and in such a way as to avoid duplication of effort, the department shall establish a comprehensive health professions resource center for the collection and analysis of educational and employment trends for health professions in this state.

(b) The department shall place high priority on collecting and disseminating data on health professions demonstrating an acute shortage in this state, including:

(1) data concerning nursing personnel; and

(2) the health professions in which shortages occur in rural areas.

(c) To the extent possible, the department may collect high priority health professions data from existing sources that the department determines are credible. The department may enter agreements with those sources that establish guidelines concerning the identification, acquisition, transfer, and confidentiality of the data.

(d) At a minimum, the data collected by the department shall include the following in regard to health professionals:

(1) the number and geographic distribution;

(2) licensure or certification status;

(3) specialty areas, if applicable; and

(4) trends or changes in license holders according to number or geographic distribution.

(e) The department may use the data collected and analyzed under this article to publish reports regarding:

(1) the educational and employment trends for health professions;

(2) the supply and demand of health professions; and

(3) other issues, as necessary, concerning health professions in this state.

(f) The board may adopt rules to govern the reporting and collection of data.

(g) In this section, "health profession" means any health or allied health profession that is licensed, certified, or registered by a state board, agency, or association.

(h) The Texas Higher Education Coordinating Board may require the assistance of other state agencies or institutions of higher education for the development of any report.

SECTION 4. Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), is amended by adding Section 5 to read as follows:

Sec. 5. The Texas Department of Health shall ensure that a licensed physician involved in direct patient care as defined by the Texas State Board of Medical Examiners is included on a survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) when surveying the quality of services provided by physicians in hospitals.

SECTION 5. Article 4414b, Revised Statutes, is amended by adding Section 1.15 to read as follows:

Sec. 1.15. BREAST CANCER SCREENING. (a) The Center for Rural Health Initiatives may establish a breast cancer screening program in counties with a population of 50,000 or less, according to the most recent federal census.

(b) The Center for Rural Health Initiatives may provide breast cancer screening under the program through contracts with public or private entities to provide mobile units and on-site screening services.

(c) The Center for Rural Health Initiatives shall coordinate the breast cancer screening program with programs administered by the Texas Cancer Council.

(d) The board may appoint an advisory committee to advise the Office of Rural Health Care on the breast cancer screening program, including targeting those areas of the state in which the program is most needed. The advisory committee may be composed of physicians who practice in rural areas, administrators of hospitals in rural areas, and representatives of organizations formed to promote breast cancer awareness.

SECTION 6. Section 5, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. (a) The Licensing Agency, with the advice of the Hospital Licensing Advisory Council, shall adopt and enforce such rules and minimum standards as may be designed to further the purposes of this Act. Except as provided by Subsections (b) and (d) of this section, the rules or minimum standards so adopted or enforced shall be limited to minimum requirements for staffing by physicians and nurses, hospital services relating to patient care, and safety, fire prevention, and sanitary provisions of hospitals as defined in this Act. Any rules or standards set shall be adopted by the Texas Board of Health in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The standards may not exceed the minimum standards for certification under Title XVIII of the Social Security Act.

(b) The Texas Board of Health, *based upon the recommendations of the advisory committee established in Subsection (e) of this section,* shall adopt rules to implement the following minimum standards governing the transfer of patients *between hospitals that do not have a transfer agreement or for services not included in such transfer agreements.* The rules must provide that patient transfers between hospitals *will* [~~should~~] be accomplished *through hospital policies that result* in [a] medically appropriate *transfers* [~~manner~~] from physician to physician as well as from hospital to hospital by providing [~~for~~]:

(1) notification to the receiving hospital prior to the transfer and confirmation by that hospital that the patient meets that hospital's admissions criteria relating to appropriate bed, physician, and other services necessary to treat the patient;

(2) the use of medically appropriate life support measures which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use to stabilize the patient prior to transfer and to sustain the patient during the transfer;

(3) the provision of appropriate personnel and equipment which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use for the transfer;

(4) the transfer of all necessary records for continuing the care for the patient; and

(5) *that the transfer of a patient may not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition, or economic status* [~~the date by which each hospital must adopt policies in accordance with the rules~~].

(c) Minimum standards prescribed by Board rules shall not contain provisions which require the consent of the patient or personal representative of the patient prior to transfer. *The rules shall also provide that a public hospital or hospital district shall accept the transfer of its eligible residents if the public hospital or hospital district has appropriate facilities, services, and staff available for providing care to the patient.*

(d) *If transfer agreements are executed between hospitals that are consistent with the requirements of this subsection, any patient transfers between the hospitals will be governed by the agreement. The transfer agreement shall be submitted to the Texas Department of Health for review for compliance with the transfer agreement requirements. Such review shall be completed within 30 days from the date submitted by hospitals. At a minimum, the transfer agreement shall provide that:*

(1) transfers will be accomplished in a medically appropriate manner and comply with Subdivisions (2), (3), (4), and (5) of Subsection (b) of this section;

(2) the transfer or receipt of patients in need of emergency care shall not be based upon the individual's inability to pay for the services rendered by the transferring or receiving hospital;

(3) multiple transfer agreements may be entered into by a hospital based upon the type or level of medical services available at other hospitals;

(4) the hospitals will recognize the right of an individual to request transfer into the care of a physician and hospital of the individual's own choosing;

(5) the hospitals will recognize and comply with the requirements of the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes) relating to the transfer of patients to mandated providers; and

(6) consideration be given to availability of appropriate facilities, services, and staff for providing care to the patient. [~~Each hospital shall adopt binding policies relating to patient transfers that are consistent with the rules adopted by the Texas Board of Health. If possible, each hospital shall implement its transfer policies by adopting transfer agreements with other hospitals.~~]

(e) *The Texas Department of Health may adopt rules to facilitate the transfer of patients between hospitals that do not have a transfer agreement based upon the recommendation of an advisory committee appointed by the Texas Board of Health. The advisory committee is composed of 12 members, including:*

(1) two physicians licensed to practice in this state who have been in active practice in a rural area;

(2) two hospital administrators who have been actively engaged in hospital administration in a rural area and who represent a public hospital and a private hospital;

(3) two physicians licensed to practice in this state who have been in active practice in an urban area;

(4) two hospital administrators who have been actively engaged in hospital administration in an urban area and who represent a public hospital and a private hospital;

(5) an emergency medical technician and a person serving as a volunteer to an emergency medical services provider; and

(6) two consumer members.

(f) The Commissioner of Health shall appoint, with the advice and consent of the Texas Board of Health, a person to serve in the capacity of Hospital Licensing Director. The duties of the Hospital Licensing Director shall be the administration of this Act and he shall be directly responsible to the Licensing Agency. Any person so appointed as Hospital Licensing Director must possess the following qualifications: He shall have had at least five (5) years experience and/or training in the field of hospital administration, be of good moral character, and a resident of the State of Texas for a period of not less than three (3) years.

SECTION 7. Section 7(a), Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Applications for licenses shall be made to the Licensing Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that:

(1) there are one or more physicians on the medical staff of the hospital;

(2) these physicians are currently licensed by the Texas State Board of Medical Examiners; and

(3) the Governing Body of the hospital has adopted and implemented a patient transfer policy in accordance with *Section* [~~Sections~~] 5(b) and *has implemented patient transfer agreements in accordance with Section 5(d) or complied with Section 5(e)* [~~(d)~~] of this Act.

SECTION 8. Section 9B(d), Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) If a hospital does not timely adopt, implement, and enforce a patient transfer policy in accordance with *Section* [~~Sections~~] 5(b) and *implement patient transfer agreements in accordance with Section 5(d) or complied with Section 5(e)* [~~(d)~~] of this Act, the facility is subject to a civil penalty of not more than $1,000 for each day of violation and for each act of violation. In determining the amount of the penalty, the district court shall consider the facility's history of previous violations, the seriousness of the violation, if the health and safety of the public was threatened by the violation, and the demonstrated good faith of the facility.

SECTION 9. Section 9C, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9C. A person harmed by the failure of a hospital to timely adopt, implement, or enforce a patient transfer policy in accordance with *Section* [~~Sections~~] 5(b) and *patient transfer agreements in accordance with Section 5(d) or Section 5(e)* [~~(d)~~] of this Act, may petition the district court of the county in which the person resides, or if the person is not a resident of the state, a district court of Travis County, for appropriate injunctive relief. Such person also may pursue remedies for civil damages existing under current common law.

SECTION 10. Section 32.022, Human Resources Code, is amended to read as follows:

Sec. 32.022. MEDICAL *AND HOSPITAL* CARE ADVISORY *COMMITTEES* [~~COMMITTEE~~]. (a) The board, on the recommendation of the commissioner, shall appoint a medical care advisory committee to advise the board and the department in developing and maintaining the medical assistance program and in making immediate and long-range plans for reaching the program's goal of providing *access to* high quality, comprehensive medical and health care services to *medically indigent* [~~needy~~] persons in the state. *To ensure that qualified applicants receive services, the committee shall consider changes in the process the department uses to determine eligibility.*

(b) The board shall appoint the committee in compliance with the requirements of the federal agency administering medical assistance. The appointments shall provide for a balanced representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the committee's field of work.

(c) The department shall adopt rules for membership on the committee to provide for efficiency of operation, rotation, stability, and continuity.

(d) The board, on the recommendation of the commissioner, may appoint regional and local medical care advisory committees and other advisory committees as considered necessary.

(e) The board, on the recommendation of the commissioner, shall appoint a hospital payment advisory committee. The committee shall advise the board and the department on necessary changes in hospital payment methodologies for inpatient hospital prospective payments and on adjustments for disproportionate share hospitals that will ensure reasonable, adequate, and equitable payments to hospital providers and that will address the essential role of rural hospitals. The board shall appoint to the committee persons with knowledge of and an interest in hospital payment issues.

SECTION 11. Section 32.024, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department, in its rules and standards governing the scope of hospital and long-term services, shall establish a swing bed program in accordance with federal regulations to provide reimbursement for skilled nursing patients who are served in hospital settings provided that the length of stay is limited to 30 days per year and the hospital is located in a county with a population of 100,000 or less. If the swing beds are used for more than one 30-day length of stay per year, per patient, the hospital must comply with the Minimum Licensing Standards as mandated by Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442(c), Vernon's Texas Civil Statutes), and the Medicaid standards for nursing home certification, as promulgated by the Texas Department of Human Services.

SECTION 12. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.917 to read as follows:

Sec. 51.917. RURAL HEALTH; FAMILY PRACTICE RESIDENCY PROGRAM. (a) The Texas Higher Education Coordinating Board, the Center for Rural Health Initiatives in the Texas Department of Health, medical schools, nursing schools, and schools of allied health sciences shall cooperate to improve and expand programs for rural areas.

(b) The Texas Higher Education Coordinating Board shall:

(1) encourage and coordinate the creation or expansion of a rural preceptor program among medical schools, teaching hospitals, nursing schools, and schools of allied health sciences; and

(2) require family practice residency programs to provide an opportunity for residents to have a one-month rotation through a rural setting.

(c) The Center for Rural Health Initiatives shall develop relief service programs for rural physicians and allied health personnel to facilitate ready access to continuing medical education.

(d) Each medical school shall:

(1) incorporate a clerkship in family practice during the third core clinical year; and

(2) report to the legislature and the Texas Higher Education Coordinating Board on its efforts to fulfill the intent of Chapter 58, Education Code, of having at least 25 percent of their first year primary care residents in family practice.

SECTION 13. Section 61.534, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The coordinating board may provide repayment assistance for the repayment of any student loan for education at an institution of higher education, including loans for undergraduate education, received by a physician through a lender [~~in Texas~~].

(c) Each fiscal biennium, the coordinating board shall attempt to allocate all funds appropriated to it for the purpose of providing repayment assistance under this subchapter.

SECTION 14. Section 61.536, Education Code, is amended to read as follows:

Sec. 61.536. ADVISORY COMMITTEES. The coordinating board may:

(1) appoint advisory committees from outside the board's membership to assist the board in performing its duties under this subchapter; *and*

(2) request the assistance of the Family Practice Residency Advisory Committee in performing those duties.

SECTION 15. Section 3, Article 5.15–1, Insurance Code, is amended to read as follows:

Sec. 3. RATE STANDARDS. Rates shall be made in accordance with the following provisions:

(a) Consideration shall be given to past and prospective loss and expense experience *for all professional liability insurance for physicians and health care providers written in* [~~inside~~] this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience *for all professional liability insurance for physicians and health care providers written* outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

SECTION 16. Article 5.15–1, Insurance Code, is amended by adding Section 4B to read as follows:

Sec. 4B. RATE APPEALS. (a) Each insurer covered by this article shall adopt a procedure for reconsideration of a rate or premium charged a physician or health care provider for professional liability insurance coverage. The procedure shall include an opportunity for a hearing before officers or employees who have responsibility for determining rates and premiums to be charged for professional liability insurance and a requirement that the insurer reconsider the rate or premium and provide the physician or health care provider a written explanation of the rate or premium being charged.

(b) If a physician or health care provider is not satisfied with a decision under procedures established under Subsection (a) of this section, the physician or health care provider may appeal to the State Board of Insurance for a review of the rate or premium and a determination if the rate or premium being charged complies with criteria under Section 3 of this article. A decision of the State Board of Insurance under this subsection may not be appealed.

(c) The State Board of Insurance by rule shall establish criteria to be followed by insurers in establishing reconsideration procedures under Subsection (a) of this section and standards and procedures to be followed in review of rates and premiums by the board.

SECTION 17. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 110 to read as follows:

CHAPTER 110. STATE LIABILITY FOR INDEMNIFICATION OF CERTAIN HEALTH CARE PROFESSIONALS

Sec. 110.001. DEFINITIONS. In this chapter:

(1) "Charity care or services" means care or services provided by a health care professional under:

(A) the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes);

(B) the Medicaid program under Chapter 32, Human Resources Code;

(C) the Maternal and Infant Health Improvement Act (Article 4447y, Vernon's Texas Civil Statutes);

(D) the Texas Primary Health Care Services Act (Article 4438d, Vernon's Texas Civil Statutes);

(E) the Chronically Ill and Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes); or

(F) a contract with a migrant or community health center that receives funds under 42 U.S.C. 254b and 254c.

(2) "Eligible medical malpractice claim" means a medical claim against a health care professional who renders charity care in at least 10 percent of the patient encounters engaged in by said health care professional during the policy year in which the claim was made.

(3) "Health care professional" means:

(A) a person who is licensed to practice medicine under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);

(B) a person registered by the Board of Nurse Examiners as an advanced nurse practitioner or a certified nurse midwife; or

(C) a person recognized by the Board of Medical Examiners as a physician assistant.

(4) "Insurer" means an insurance company chartered to write or admitted to write and writing medical professional liability insurance in this state or the Texas Medical Liability Insurance Underwriting Association (Subchapter E, Chapter 21, Article 21.49-3, Insurance Code) or any self-insurance trust created under Subchapter E, Chapter 21, Article 21.49-4, Insurance Code, for the purpose of providing medical professional liability insurance. The term "insurer" does not include an institution of higher education that provides medical professional liability coverage under Chapter 59, Education Code.

(5) "Medical malpractice claim" means a claim or action against a health care professional alleging one or more negligent acts or omissions in the diagnosis, care, or treatment of a patient and alleging that injury to or death of a patient resulted therefrom, without regard to whether said claim or action is based upon tort or contract principles.

(6) "Patient encounter" means an occasion on which a health care professional renders professional health care services to a patient.

Sec. 110.002. STATE LIABILITY: PERSONS COVERED. In a cause of action against a health care professional based on conduct described in Section 110.003, the state shall indemnify the health care professional for actual damages adjudged

against the health care professional or which the health care professional becomes obligated to pay pursuant to a settlement reached in accordance with this chapter.

Sec. 110.003. STATE LIABILITY: CONDUCT COVERED. (a) The state is liable for indemnification under this chapter only if the damages are based on an eligible medical malpractice claim against a health care professional in the course and scope of said person's professional health care activities.

(b) The state is not liable for indemnification for an intentional act or an act of gross negligence.

Sec. 110.004. LIMITS ON AMOUNT OF RECOVERABLE DAMAGES. (a) State liability for indemnification under this chapter may not exceed:

(1) $100,000 for a single occurrence in the case of an eligible medical malpractice claim arising as a result of prenatal care, care during labor and delivery, and care given to a mother or infant during the 30-day period immediately following delivery, or as a result of emergency care; or

(2) $25,000 for a single occurrence in the case of any other eligible medical malpractice claim.

(b) The state shall be payor of first resort for an eligible medical malpractice claim for amounts falling within the limits set forth in Subsection (a) of this section.

Sec. 110.005. TIMELY NOTICE TO ATTORNEY GENERAL REQUIRED. The state is not liable for indemnification for damages under this chapter unless the health care professional against whom the cause of action is asserted:

(1) is covered under a valid professional liability insurance policy that is issued by an insurer and that provides coverage for the medical malpractice claim that is the subject of the claim or action with a policy limit of not less than $100,000 per occurrence and $300,000 aggregate for the policy period; and

(2) delivers or causes to be delivered to the attorney general a true copy of any written notice of said medical malpractice claim and any summons or citation served on the health care professional, which written notice, summons, or citation shall be delivered to the attorney general not later than the 45th day after the receipt thereof by the health care professional.

Sec. 110.006. INFORMATION PROVIDED TO ATTORNEY GENERAL; SETTLEMENTS. (a) The insurer for a health care professional who is the subject of an eligible malpractice claim shall designate an attorney or other representative assigned to the claim who shall keep the attorney general or his designee reasonably informed of significant developments in the claim or action, including all settings for trials or dispositive motions, all settlement offers and demands, all pleadings by or against the health care professional, all judgments or other dispositive orders, and all written recommendations of counsel for the health care professional regarding settlement.

(b) If a settlement agreement is reached between the health care professional and a claimant, the insurer for the health care professional shall promptly notify the attorney general of same. The settlement shall become final and binding upon the state unless, within 10 days of the receipt of said notice by the attorney general (or such greater or lesser period of time as the court in which the action is filed may allow), the attorney general files in said court (or, if no action is pending in any court, in a district court of Travis County, Texas) a written objection to the settlement setting forth in detail why the court should find that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated based upon all the facts and circumstances of the case. A hearing shall promptly be held upon any such objection, either before the court or a special master appointed by the court for that purpose. At any such hearing, the burden shall be upon the attorney general to prove that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated based upon all the facts and circumstances of the case. Unless the court finds that the reasonable settlement value of the total claim being settled is significantly less than the amount for which

the state would be liable for indemnification if the settlement were to be consummated based upon all the facts and circumstances of the case, the court shall enter an order approving the settlement and directing the state to make the required indemnity payment thereunder. Such an order shall be reviewable by an appellate court only upon the filing of an application for writ of mandamus within 15 days of the date said order is signed, and only for an abuse of discretion by the trial court. Any such application for writ of mandamus shall be given priority in the appellate court in which it is filed above all other applications for writ of mandamus docketed in said court.

(c) If the attorney general files an objection under Subsection (b) of this section, the court may, with the agreement of the parties to the settlement agreement, permit the payment of any other sums due to be paid under said agreement by parties other than the state while the objection of the attorney general is pending adjudication.

(d) If a suit involving an eligible medical malpractice claim is imminently scheduled for jury trial, or is being tried before a jury, and settlement negotiations are ongoing between the health care professional and any claimant, either of those parties may request the court to require the attorney general or his designee to assign an attorney to monitor such negotiations so that if a settlement agreement is reached between the parties, the attorney so assigned by the attorney general can immediately advise the court of any objection, in which event the hearing described in Subsection (b) of this section regarding the reasonableness of the settlement amount shall be held immediately after the settlement agreement is reduced to writing or announced on the record in open court, so that the trial court may render its determination before the petit jury or jury panel is discharged.

(e) Except to the extent that the attorney general is authorized under this section to object to the reasonableness of a settlement, the attorney general shall not be authorized to intervene in any court proceeding involving an eligible medical malpractice claim. The insurer for the health care professional shall be in charge of the defense of any such claim.

(f) Upon final disposition of an eligible medical malpractice claim by settlement or judgment, funds shall be paid by the comptroller on vouchers that shall be promptly prepared, verified, and signed by the attorney general.

Sec. 110.007. EXPIRATION. Unless continued in existence, this chapter expires September 1, 1993.

SECTION 18. Subchapter B, Chapter 5, Insurance Code, is amended by adding Article 5.15–4 to read as follows:

Art. 5.15–4. REDUCTION IN CERTAIN PROFESSIONAL LIABILITY INSURANCE PREMIUMS

Sec. 1. DEFINITIONS. In this article, "charity care or services," "eligible medical malpractice claim," "health care professional," "insurer," "medical malpractice claim," and "patient encounter" have the meanings assigned by Section 110.001, Civil Practice and Remedies Code.

Sec. 2. QUALIFICATION FOR DISCOUNT. A health care professional is entitled to a premium discount for medical professional liability insurance coverage if the professional meets the criteria stated in Section 4 of this article.

Sec. 3. AMOUNT OF PREMIUM DISCOUNT. The State Board of Insurance shall approve premium discounts to be used by each insurer on premiums to be charged to a health care professional covered by this section. The board shall base the approved discounts upon loss and statistical data provided by each insurer and on the reduction in the insurer's liability exposure based on the state's indemnification of the first $100,000 or $25,000 under Chapter 110, Civil Practice and Remedies Code, of an eligible malpractice claim against a health care professional.

Sec. 4. QUALIFICATION FOR PREMIUM DISCOUNT. A health care professional is entitled to a premium discount for medical professional liability insurance coverage if:

(1) the projected patient encounters of the health care professional during the policy year will involve providing charity care or services in 10 percent or more of the health care professional's patient encounters; and

(2) the health care professional completes 15 hours of continuing education during the term of the policy on patient safety and risk reduction subjects related to the health care professional's practice that are sponsored, approved, endorsed, or accredited by the State Board of Insurance, an "insurer" as defined in this Act, or state or nationally recognized accrediting organizations or continuing medical or nurse education programs.

Sec. 5. REQUEST FOR PREMIUM DISCOUNT. A health care professional who desires a premium discount for medical professional liability insurance coverage shall submit to the insurer not later than the 30th day before the beginning of the term of the policy a written verified application for a new policy or a verified statement for a policy to be renewed stating that the health care professional desires a premium discount and qualifies for a premium discount under this article. The application or statement also shall provide necessary information to determine the eligibility of the health care professional and the amount of the discount.

Sec. 6. AUDIT; PENALTY. (a) At the end of a policy year, an insurer may audit the records of any health care professional to whom the insurer has provided a discount under this article to determine if the health care professional provided the charity care and services necessary under Section 4 of this article to qualify for the premium discount during the preceding policy year.

(b) To conduct the audit, the insurer is entitled to access to any books and records necessary to determine if the verified application or statement submitted for the coverage was correct and the health care professional was eligible for the premium discount. If a health care professional denies access to the property or to the books and records, the insurer may obtain an appropriate court order from a court of competent jurisdiction to gain access to the books and the records.

(c) If an insurer's audit indicates that a health care professional did not provide charity care or services in 10 percent or more of the health care professional's patient encounters, the insurer may charge the health care professional an amount equal to the difference between the premium paid and the premium that would have been due if the health care professional had not received the premium discount plus 20 percent of the amount of the premium that would have been due without the premium discount.

(d) If a health care professional who has received the premium discount for the policy year submits the difference between the premium paid and the premium that would have been due if the health care professional had not received the premium discount plus interest at the legal rate for the unpaid premium prior to 30 days before the expiration of the policy year, the health care professional will not be subject to the penalty provided in Subsection (c).

Sec. 7. PROHIBITIONS ON INSURER; SANCTIONS. (a) An insurer may not cancel or refuse to renew a health care professional's medical professional liability insurance coverage solely on the basis that the health care professional is eligible for a premium discount under this article except for the following reasons:

(1) fraud or misrepresentation in obtaining coverage;

(2) failure to pay premiums when due; or

(3) the insurer's being placed under supervision or in conservatorship or receivership, if the cancellation or nonrenewal is approved by the supervisor, conservator, or receiver.

(b) A health care professional who files the appropriate verified application or statement under this article will be entitled to a premium discount as approved by the board under Section 3 of this article. When consent to rate is used, a health care professional will be entitled to the appropriate discount from the rate agreed to by consent.

(c) An insurer who violates this article is subject to the sanctions authorized under Section 7, Article 1.10, of this code.

Sec. 8. AUTHORITY OF STATE BOARD OF INSURANCE. The State Board of Insurance shall administer this article and shall adopt necessary rules, forms, endorsements, and procedures to carry out this article.

Sec. 9. EXPIRATION. Unless continued in existence this article expires September 1, 1993.

SECTION 19. Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) This Act shall be so construed that:

(1) a person licensed to practice medicine shall have the authority to delegate to any qualified and properly trained person or persons acting under the physician's supervision any medical act which a reasonable and prudent physician would find is within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician, the act can be properly and safely performed by the person to whom the medical act is delegated and the act is performed in its customary manner, not in violation of any other statute, and the person does not hold himself out to the public as being authorized to practice medicine. The delegating physician shall remain responsible for the medical acts of the person performing the delegated medical acts. The board may determine whether or not an act constitutes the practice of medicine, not inconsistent with this Act, and may determine whether any medical act may or may not be properly or safely delegated by physicians;

(2) a person licensed to practice medicine is authorized and shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing, in the physician's office, dangerous drugs, as ordered by the physician which are used or required to meet the immediate needs of the physician's patients. The administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as the orders are defined by the board. The administration or provision of dangerous drugs shall be in compliance with laws relating to the practice of medicine and Texas and federal laws relating to the dangerous drugs. This subdivision does not permit the physician or person or persons acting under the supervision of the physician to keep a pharmacy, advertised or otherwise, for the retailing of the dangerous drugs without complying with the applicable laws relating to the dangerous drugs;

(3) a person licensed to practice medicine shall be authorized and shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing dangerous drugs, if the provision is provided through a facility licensed by the State Board of Pharmacy pursuant to applicable law, as ordered by the physician, which are used or required to meet the immediate needs of the physician's patients. The administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as the orders are defined by the board. The provision of dangerous drugs shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, Texas or federal drug laws, and rules that may be properly issued by the State Board of Pharmacy. The administration shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, and Texas or federal drug laws. This subdivision does not permit the physician or person or persons acting under the supervision of the physician to keep a pharmacy, advertised or otherwise, for the retailing of the dangerous drugs without complying with the applicable laws relating to the retailing of dangerous drugs. In this subdivision and in Subdivision (2) of this subsection, "administering" means the direct application of a drug by injection, inhalation, ingestion, or any other means to the body of the physician's patient; "provision" means to supply one or more unit doses of a drug, medicine, or dangerous drug. The

drug or medicine shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws. However, a qualified and trained person or persons, acting under the supervision of a physician, may be permitted to specify at the time of the provision the inclusion of the date of provision and the patient's name and address;

(4) in the provision of services and the administration of therapy by public health departments, as officially prescribed by the Texas Department of Health for the prevention or treatment of specific communicable diseases or health conditions for which the Texas Department of Health is responsible for control under state law, a person licensed to practice medicine shall be authorized and shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing dangerous drugs, as ordered by the physician that are used or required to meet the needs of the patients. The administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as the orders are defined by the board. The provision of dangerous drugs shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of pharmacy, and laws relating to the practice of professional nursing. The orders may not be inconsistent with this Act and may not be used for the performance of acts and duties that require the exercise of independent medical judgment. In this subdivision, "administering" means the direct application of a drug by injection, inhalation, ingestion, or any other means to the body of the patient; "provision" means to supply one or more unit doses of a drug, medicine, or dangerous drug. The drug or medicine shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws. However, a qualified and trained person or persons, acting under the supervision of a physician, may be permitted to specify at the time of the provision the inclusion of the date of provision and the patient's name and address.

(5)*(A) At a site serving a medically underserved population, a physician licensed by the board shall be authorized to delegate to a registered nurse or physician assistant acting under adequate physician supervision, the act or acts of administering, providing, or carrying out a prescription drug order as authorized by the physician through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board.*

(B) The carrying out of prescription drug orders under this subsection shall comply with other applicable laws.

(C) Physician supervision shall be adequate if a delegating physician:

(i) is responsible for the formulation or approval of such physician's orders, standing medical orders, standing delegation orders, or other orders or protocols and periodically reviews such orders and the services provided patients under such orders;

(ii) is on site at least once a week to provide medical direction and consultation;

(iii) receives a daily status report from the registered nurse or physician assistant on any problems or complications encountered; and

(iv) is available through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

(D) In this subsection:

(i) "Registered nurse" means a registered nurse recognized by the Board of Nurse Examiners as having the specialized education and training required under Section 7, Article 4514, Revised Statutes.

(ii) "Physician assistant" means a physician assistant recognized by the Board of Medical Examiners as having the specialized education and training required under Subsection (d), Section 5.02 of this Act.

(iii) "Carrying out a prescription drug order" means to complete a prescription drug order presigned by the delegating physician by providing the following information: the patient's name and address; the drug to be dispensed; directions to the patient in regard to the taking and dosage; the name, address, and telephone number of the physician; the name, address, telephone and identification number of the registered nurse or physician assistant completing the prescription drug order; the date; and the number of refills permitted. The board may adopt additional methods to carry into effect or put into force a physician's prescription under physician's orders, standing medical orders, standing delegation orders, or other orders or protocols.

(iv) "A site serving a medically underserved population" means:

(a) a site located in a medically underserved area;

(b) a site located in a health manpower shortage area;

(c) a clinic designated as a rural health clinic under the Rural Health Clinic Services Act of 1977 (Pub. L. No. 95-210);

(d) a public health clinic or a family planning clinic under contract with the Texas Department of Human Services or the Texas Department of Health;

(e) a site located in an area in which the Texas Department of Health determines there exists an insufficient number of physicians providing services to eligible clients of federal, state, or locally funded health care programs; or

(f) a site that the Texas Department of Health determines serves a disproportionate number of clients eligible to participate in federal, state, or locally funded health care programs.

(v) "Health manpower shortage area" means (1) an area in an urban or rural area of Texas (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the secretary of health and human services determines has a health manpower shortage and which is not reasonably accessible to an adequately served area; (2) a population group which the secretary determines to have such a shortage; or (3) a public or nonprofit private medical facility or other facility which the secretary determines has such a shortage as delineated in 42 U.S.C. Section 254(e)(a)(1).

(vi) "Medically underserved area" means an area in Texas with a medically underserved population or an urban or rural area designated by the secretary of health and human services as an area in Texas with a shortage of personal health services or a population group designated by the secretary as having a shortage of such services (as defined in 42 U.S.C. Section 300(e)-1(7)).

(E) After making a determination under either Subdivision (D)(iv)(e) or (D)(iv)(f) that a site serves a medically underserved population, the Texas Department of Health shall publish notice of its determination in the Texas Register and provide an opportunity for public comment in the same manner as for a proposed rule under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(F) The authority granted to a physician to delegate under this subdivision shall not be construed as limiting the authority of a physician to delegate under any other subdivision of this subsection.

(6)(A) A duly licensed and qualified optometrist may administer topical ocular pharmaceutical agents in the practice of optometry as provided by this subdivision. These pharmaceutical agents may not be used for therapeutic purposes.

(B) To be entitled to use topical ocular pharmaceutical agents in the practice of optometry, an optometrist must possess a valid standing delegation order that:

(i) is issued to the optometrist by an area physician licensed to practice medicine in this state; and

(ii) authorizes the use of the pharmaceutical agents authorized by this subdivision.

(C) On request, an optometrist will be issued a standing delegation order described by Paragraph (B) of this subdivision unless the physician acting as a reasonable and prudent physician determines that denial is within the scope of sound medical judgment as it pertains to optometry, or that it is not in the public interest, and the basis for denial shall be given to the requesting optometrist in writing if requested. It is necessary that the physician have knowledge of the requesting optometrist, and if not, then same shall be good cause for denial.

(D) A standing delegation order issued under this subdivision or a representation of the order will be prominently displayed in the office of the optometrist. The board will prescribe the form of the standing delegation order and the certificate or representation of the order. The standing delegation order, as a minimum, will:

(i) be in writing, dated and signed by the physician;

(ii) specify the available topical ocular pharmaceutical agents, including but not limited to topical anesthetics and dilating agents, to be administered in the office; and

(iii) specify that said agents shall not be used for therapeutic purposes.

(E) On the complaint of any person or on its own initiative, the board of medical examiners may cancel a standing delegation order issued under this section if it determines that the optometrist possessing the order has violated the standing delegation order or this section.

(F) Except as provided by Paragraph (E) of this subdivision, a standing delegation order issued under this subdivision remains valid as long as:

(i) the physician who issued the order is a resident of this state and is licensed to practice medicine in this state;

(ii) no irregularities are found on annual review; and

(iii) the order is not canceled for good cause by either party.

(G) A physician who has issued a standing delegation order in compliance with this subdivision is immune from liability in connection with acts performed pursuant to the standing delegation order so long as he has used prudent judgment in the issuance or the continuance of the standing delegation order.

(H) Nothing herein is intended to limit or expand the practice of optometry as defined by law.

(7) [~~(6)~~] Authority to delegate medical acts to properly qualified persons as provided in this section is recognized as applicable to emergency care rendered by emergency medical personnel certified by the Texas Department of Health.

(8) [~~(7)~~] (A) It is the policy of this state that the prevention of ophthalmia neonatorum in newborn infants is of paramount importance for the protection of the health of Texas children.

(B) Authority to delegate medical acts to a lay midwife registered under Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is recognized as applicable to the possession of and administration of eye prophylaxis for the prevention of ophthalmia neonatorum.

(C) A physician who has issued such a standing delegation order is immune from liability in connection with acts performed pursuant to the standing delegation order as long as the lay midwife has provided proof of compliance with Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), prior to the issuance of the order.

SECTION 20. Section 5.02, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) The board shall adopt rules establishing:

(1) any specialized education and training, including pharmacology, a physician assistant must have to carry out a prescription drug order pursuant to Subdivision (5), Subsection (d), Section 3.06, of this Act; and

(2) a system for assigning an identification number to a physician assistant who provides the board with evidence of completing the required specialized education and training.

SECTION 21. Article 4514, Revised Statutes, is amended by adding Section 7 to read as follows:

Sec. 7. The board shall adopt rules establishing:

(1) any specialized education and training, including pharmacology, a registered nurse must have to carry out a prescription drug order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes); and

(2) a system for assigning an identification number to a registered nurse who provides the board with evidence of completing the required specialized education and training.

SECTION 22. Section 5, Article 4518, Revised Statutes, is amended to read as follows:

Sec. 5. Insofar as any of the following acts require substantial specialized judgment and skill and insofar as the proper performance of any of the following acts is based upon knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing, "Professional Nursing" shall be defined as the performance for compensation of any nursing act (a) in the observation, assessment, intervention, evaluation, rehabilitation, care and counsel and health teachings of persons who are ill, injured or infirm or experiencing changes in normal health processes; (b) in the maintenance of health or prevention of illness; (c) in the administration of medications or treatments as *ordered* [~~prescribed~~] by a licensed physician, *including a podiatric physician licensed by the Texas State Board of Podiatry Examiners,* or dentist; (d) in the supervision or teaching of nursing; (e) in the administration, supervision, and evaluation of nursing practices, policies, and procedures. The foregoing shall not be deemed to include acts of medical diagnosis or prescription of therapeutic or corrective measures. *Nothing in this section shall be construed as prohibiting a registered nurse recognized by the board as having the specialized education and training required under Section 7, Article 4514, Revised Statutes, and functioning under adequate physician supervision from carrying out prescription drug orders or treatments under physician's orders, standing medical orders, standing delegation orders, or other orders or protocols.*

SECTION 23. Subdivision (33), Section 5, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(33) "Prescription drug order" means:

(A) a written order from a practitioner or verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; *or*

(B) a written or verbal order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

SECTION 24. Subsection (h), Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) The term "prescription" means a written order or telephonic order, by a practitioner *or an order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes)* or *an order* by an agent of the practitioner who is designated in writing as authorized to communicate prescriptions by telephone, to a pharmacist for a dangerous drug to be dispensed, which specifies the date of its issue, the name and address of the patient (and, if such dangerous drug is prescribed for an animal, the species of such animal), the name and quantity of the dangerous drug prescribed, and the directions for use of such drug.

SECTION 25. Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476–14, Vernon's Texas Civil Statutes), is amended by adding Section 3B to read as follows:

Sec. 3B. (a) Each practitioner shall designate in writing the name of each registered nurse or physician assistant authorized to carry out a prescription drug order pursuant to Subdivision (5), Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes). A list of the registered nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific registered nurse or physician assistant.

SECTION 26. The Texas Department of Human Services shall not impose any conditions on Medicaid reimbursement of rural health clinics that are more stringent than those imposed by the Rural Health Clinic Services Act of 1977 (Pub. L. No. 95–210) or the laws of this state regulating the practice of medicine, pharmacy, or professional nursing.

SECTION 27. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. EXPERT WITNESSES

Sec. 14.01. QUALIFICATION OF EXPERT WITNESS IN SUIT AGAINST PHYSICIAN. (a) In a suit involving a health care liability claim against a physician for injury to or death of a patient, a person may qualify as an expert witness on the issue of whether the physician departed from accepted standards of medical care only if:

(1) the person is practicing at the time such testimony is given or was practicing at the time the claim arose and has knowledge of accepted standards of medical care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; or

(2) the court, after a hearing conducted outside the presence of the jury, determines that the person is otherwise qualified to give expert testimony on said issue.

(b) For the purpose of this section, "practicing" includes, but is not limited to, training residents or students at an accredited school of medicine or osteopathy or serving as a consulting physician to other physicians who provide direct patient care, upon the request of such other physicians.

SECTION 28. Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 7.02 to read as follows:

Sec. 7.02. JURY INSTRUCTION AUTHORIZED IN CERTAIN CASES. (a) In a jury trial involving a health care liability claim against a physician or hospital for injury to or death of a patient in which the court determines that the following instruction is reasonably applicable to the facts, the court shall provide the following instruction in the court's charge to the jury:

"A finding of negligence may not be based solely on evidence of a bad result to the patient in question, but such a bad result may be considered by you, along with other evidence, in determining the issue of negligence; you shall be the sole judges of the weight, if any, to be given to any such evidence."

(b) Nothing in Subsection (a) of this section shall affect the existing law regarding the applicability or nonapplicability of the doctrine of res ipsa loquitur to a health care liability claim.

(c) The determination of whether the instruction authorized by Subsection (a) of this section is reasonably applicable to the facts shall be made by the trial court in its sole discretion, and such determination by the trial court shall be reviewable by an appellate court only for an abuse of such discretion.

SECTION 29. Section 1.03, Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (24)-(26) to read as follows:

(24) "Emergency medical services and trauma care system" means an arrangement of available resources that are coordinated for the effective delivery of emergency health care services in geographical regions consistent with planning and management standards.

(25) "Trauma patient" means any critically injured person who has been:

(A) evaluated by a physician, a registered nurse, or emergency medical services personnel; and

(B) found to require medical care in a trauma facility.

(26) "Trauma facility" means a health care facility that is capable of comprehensive treatment of seriously injured persons and that is a part of an emergency medical services and trauma care system.

SECTION 30. The Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) is amended by adding Articles 4 and 5 to read as follows:

Art. 4. EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS

Sec. 4.01. DUTIES OF BUREAU. The bureau shall:

(1) develop and monitor a statewide emergency medical services and trauma care system;

(2) designate trauma facilities;

(3) develop and maintain a trauma reporting and analysis system to:

(A) identify severely injured trauma patients at each health care facility in this state;

(B) identify the total amount of uncompensated trauma care expenditures made each fiscal year by each health care facility in this state; and

(C) monitor trauma patient care in each health care facility, including each designated trauma center, in emergency medical services and trauma care systems in this state; and

(4) provide for coordination and cooperation between this state and any other state with which this state shares a standard metropolitan statistical area.

Sec. 4.02. EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS. (a) The board by rule shall adopt minimum standards and objectives to implement emergency medical services and trauma care systems. The board by rule shall provide for the designation of trauma facilities and for triage, transfer, and transportation policies that reflect the recommendations of the technical advisory committee. The board and the technical advisory committee shall consider guidelines adopted by the American College of Surgeons and the American College of Emergency Physicians in adopting rules under this section. The rules must provide specific requirements for the care of trauma patients, must ensure that the trauma care is fully coordinated with all hospitals and emergency medical services in the delivery area, and must reflect the geographic areas of the state, considering time and distance. The rules must include:

(1) prehospital care management guidelines for triage and transportation of trauma patients;

(2) flow patterns of trauma patients and geographic boundaries regarding trauma patients;

(3) assurances that trauma facilities will provide quality care to trauma patients referred to the facilities;

(4) minimum requirements for resources and equipment needed by a trauma facility to treat trauma patients;

(5) standards for the availability and qualifications of the health care personnel, including physicians and surgeons, treating trauma patients within a facility;

(6) requirements for data collection, including trauma incidence reporting, system operation, and patient outcome;

(7) requirements for periodic performance evaluation of the system and its components; and

(8) assurances that designated trauma facilities will not refuse to accept the transfer of a trauma patient from another facility solely because of the person's inability to pay for services or because of the person's age, sex, race, religion, or national origin.

(b) The bureau may grant an exception to a rule adopted under this section if it finds that compliance with the rule would not be in the best interests of the persons served in the affected local emergency medical services and trauma care delivery area.

(c) Each emergency medical services and trauma care system must have:

(1) local or regional medical control for all field care and transportation, consistent with geographic and current communications capability;

(2) triage, transport, and transfer protocols; and

(3) one or more hospitals categorized according to trauma care capabilities using standards adopted by board rule.

(d) This section does not prohibit a health care facility from providing services that it is authorized to provide under a license issued to the facility by the department.

Sec. 4.03. TRAUMA FACILITIES. (a) The bureau may designate trauma facilities that are a part of an emergency medical services and trauma care system. A trauma facility shall be designated by the level of trauma care and services provided in accordance with the American College of Surgeons guidelines for level I, II, and III trauma centers and rules adopted by the board for level IV trauma centers. In adopting rules under this section, the board may consider trauma caseloads, geographic boundaries, or minimum population requirements, but the bureau may not deny designation solely on these criteria. The board may not set an arbitrary limit on the number of facilities designated as trauma facilities.

(b) A health care facility may apply to the bureau for designation as a trauma facility and the bureau shall grant the designation if the facility meets the requirements for designation prescribed by board rules.

(c) After September 1, 1993, a health care facility may not use the terms "trauma facility," "trauma hospital," "trauma center," or similar terminology in its signs or advertisements or in the printed materials and information it provides to the public unless the facility has been designated as a trauma facility under this Act.

Sec. 4.04. FEES. (a) The bureau shall charge a fee to a health care facility that applies for initial or continuing designation as a trauma facility.

(b) The board by rule shall set the amount of the fee schedule for initial or continuing designation as a trauma facility according to the number of beds in the health care facility.

(c) The board shall set the fee for the highest level designation at not more than $3 a bed, but the total fee for the facility may not be less than $100 or more than $3,000. The fee for an intermediate level designation shall be set at not more than $2 a bed, but the total fee for the facility may not be less than $100 or more than $2,000. The fee for the lowest level designation shall be set at not more than $1 a bed, but the total fee for the facility may not be less than $100 or more than $1,000.

(d) A fee under Subsection (c) of this section may not exceed the cost directly related to designating trauma facilities under this Act.

(e) This section does not restrict the authority of a health care facility to provide a service for which it has received a license under other state law.

Sec. 4.05. DENIAL, SUSPENSION, OR REVOCATION OF DESIGNATION. (a) The department may deny, suspend or revoke a health care facility's designation as a trauma facility if the facility fails to comply with the rules adopted under this Act.

(b) The denial, suspension, or revocation of a designation by the department and the appeal from that action are governed by the department's rules for a contested

case hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 4.06. ADVISORY COMMITTEE. (a) The board shall appoint a 12-member technical advisory committee to advise the bureau in areas requiring professional medical expertise and to review and comment on hospital administrative and operational considerations relating to rules adopted under this Act.

(b) Appointees to the technical advisory committee must include:

(1) hospital administrators who represent both urban and rural facilities, chosen from a list of nominees submitted by statewide associations of hospitals;

(2) representatives appointed from statewide associations of emergency nurses;

(3) practicing physicians who are board-certified in emergency medicine, neurosurgery, surgery, and anesthesiology;

(4) two family practice physicians, at least one of whom has been in active practice in a rural area for at least five years preceding appointment; and

(5) at least one member who usually represents claimants, chosen from a list of nominees submitted by the statewide association of trial lawyers.

(c) A member of the technical advisory committee is entitled to the per diem and travel allowance authorized by the General Appropriations Act for state employees.

Art. 5. FUNDING FOR EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS

Sec. 5.01. LEGISLATIVE FINDINGS. The legislature finds that death caused by injury is the leading cause of death for persons one through 44 years of age, and the third overall cause of death for all ages. Effective emergency medical services response and resuscitation systems, medical care systems, and medical facilities reduce the occurrence of unnecessary mortality. It is estimated that trauma costs more than $63 million a day nationally, which includes lost wages, medical expenses, and indirect costs. Proportionately, this cost to Texas would be more than $4 million a day. Many hospitals provide emergency medical care to patients who are unable to pay for catastrophic injuries directly or through an insurance or entitlement program. In order to improve the health of the people of the state, it is necessary to improve the quality of emergency and medical care to the people of Texas who are victims of unintentional, life-threatening injuries by encouraging hospitals to provide trauma care and increasing the availability of emergency medical services.

Sec. 5.02. GRANT PROGRAM. (a) The department shall establish a program to award grants to initiate, expand, maintain, and improve emergency medical services and to support medical systems and facilities that provide trauma care.

(b) The board by rule shall establish eligibility criteria for awarding the grants. The rules must require the department to consider:

(1) the need of an area for the provision of emergency medical services or trauma care and the extent to which the grant would meet the identified need;

(2) the availability of personnel and training programs;

(3) the availability of other funding sources;

(4) the assurance of providing quality services;

(5) the use or acquisition of helicopters for emergency medical evacuation; and

(6) the development or existence of an emergency medical services system.

(c) The department may approve grants according to the rules adopted by the board. A grant awarded under this section is governed by the Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes) and by the rules adopted under that Act.

(d) The department may require a grantee to provide matching funds equal to not more than 75 percent of the amount of the grant.

Sec. 5.03. ACCEPTANCE OF GIFTS. A trauma facility or an emergency medical services and trauma care system may accept gifts or other contributions for the purposes of this Act.

SECTION 31. Sections 17 and 18 of this Act take effect on January 1, 1990, and apply only to causes of action that accrue on or after that date.

SECTION 32. Sections 27 and 28 of this Act apply only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

SECTION 33. This Act takes effect September 1, 1989.

SECTION 34. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 1, 1989, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 18 on May 26, 1989, by a non-record vote; passed by the Senate, with amendments, on May 24, 1989, by the following vote: Yeas 30, Nays 0.

Approved June 16, 1989.

Effective Sept. 1, 1989, except sections 17 and 18 effective Jan. 1, 1990.

CHAPTER 1028

H.B. No. 44

AN ACT

relating to the movement of traffic on multiple-laned roadways.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article VI, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by adding Section 60A to read as follows:

Sec. 60A. DRIVING ON MULTIPLE-LANED ROADWAYS. On a roadway divided into three or more lanes providing for one-way movement of traffic, a vehicle entering a lane of traffic from a lane to the right shall yield the right-of-way to a vehicle entering the same lane of traffic from a lane to the left.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 20, 1989, by a non-record vote; passed by the Senate on May 28, 1989, by the following vote: Yeas 31, Nays 0.

Approved June 16, 1989.

Effective Aug. 28, 1989, 90 days after date of adjournment.